Supreme Court of the United States.

No. 269.—October Term, 1905.

The United States, Appellant, vs. The American Sugar Refining Company.	Appeal from the Circuit Court of the United States for the Southern District of New York.

[May 28, 1906.]

The question in the case is whether certain sugars which were imported between the 12th of June and the 28th of September, 1903, were chargeable with full duties under the tariff act of July 24, 1897, or were entitled to twenty per cent reduction of duties prescribed by that act, under the treaty between the United States and Cuba of the date December 11, 1902, and an act of Congress of December 17, 1903. The answer to the question depends upon when the treaty went into effect, whether upon the 10th of April, 1903, or the 27th of December, 1903. The appellant contends for the former and the appellee for the latter date. Duties were assessed under the act of 1897 without reduction. Protests were filed and an appeal taken to the board of appraisers, who sustained the collector. The decision of the board was reversed by the Circuit Court. The treaty provided, (33 Stat. 2136, 2142,) among other things as follows:

"The President of the United States of America . . . and the President of the Republic of Cuba . . . have in consideration of and in compensation for the respective concessions and engagements made by one to the other, as hereinafter recited, agreed, and do hereby agree upon the following articles for the regulations and government of their reciprocal trade, namely:

Article II.

"During the term of this convention all articles of merchandise not included in the foregoing Article I, and being the product of the soil or industry of the Republic of Cuba imported into the United States, shall be admitted at a reduction of 20 per centum of the rates of duty thereon, as provided by the tariff act of the United States approved July 24th, 1897, or as may be provided by any tariff law of the United States subsequently enacted."

Article XI was as follows:

"The present convention shall be ratified by the appropriate authorities of the respective countries, and the ratifications shall be exchanged at Washington, District of Columbia, United States of America, as soon as may be before the thirty-first day of January, 1903, *and the convention shall go into effect on the tenth day after the exchange of ratifications*, and shall continue in force for the term of five (5) years from date of going into effect, and from year to year thereafter until the expiration of one year from the day when either of the contracting parties shall give notice to the other of its intention to terminate the same."

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By supplemental treaty signed January 26, 1903, (33 Stat. 2145,) it was provided that "the respective ratifications of the said convention shall be exchanged as soon as possible, and within two months from January 31, 1903."

March 19, 1903, the Senate added the following amendment at the end of Article XI: "This convention shall not take effect until the same shall have been approved by the Congress."

On March 31, 1903, ratifications were exchanged. At this date Congress was not in session, but was convened in special session November 9, 1903, and passed on December 17, 1903, (33 Stat. 3,) an act entitled: "An act to carry into effect a convention between the United States and the Republic of Cuba, signed on the 11th day of December in the year 1902." Section 1 provides as follows:

"That whenever the President of the United States shall receive satisfactory evidence that the Republic of Cuba has made provision to give full effect to the articles of the convention between the United States and the Republic of Cuba, signed on the eleventh day of December, in the year nineteen hundred and two, he is hereby authorized to issue his proclamation declaring he has received such evidence, *and thereupon, on the tenth day after exchange of ratifications of such convention* between the United States and the Republic of Cuba, *and so long as the said convention shall remain in force*, all articles of merchandise being the product of the soil or industry of the Republic of Cuba, which *are now* imported into the United States free of duty, *shall continue* to be so admitted free of duty, and all other articles of merchandise being the product of the soil or industry of the Republic of Cuba imported into the United States *shall be admitted* at a reduction of twenty per centum of the rates of duty thereon, as provided by the tariff act of the United States approved July twenty-fourth, eighteen hundred and ninety-seven, or as may be provided by any tariff law of the United States subsequently enacted. The rates of duty herein granted by the United States to the Republic of Cuba are and shall continue *during the term of said convention* preferential in respect to all like imports from other countries: *Provided*, That while said convention is in force no sugar imported from the Republic of Cuba, and being the product of the soil or industry of the Republic of Cuba, shall be admittted into the United States at a reduction of duty greater than twenty per centum of the rates of duty thereon, as provided by the tariff act of the United States approved July twenty-fourth, eighteen hundred and ninety-seven, and no sugar the product of any other foreign country shall be admitted by treaty or convention into the United States while this convention is in force at a lower rate of duty than that provided by the tariff act of the United States approved July twenty-fourth, eighteen hundred and ninety-seven: *And provided further*, That nothing herein contained shall be held or construed as an admission on the part of the House of Representatives that custom duties can be changed otherwise than by an act of Congress originating in said House."

The same day (December 17, 1903) the President issued his proclamation, (33 Stat. 2136,) which, after setting forth the treaty and the act of

Congress and reciting the above facts, together with the fact that ratifications of said convention had been exchanged on March 31, 1903, declared:

"And whereas satisfactory evidence has been received by the President of the United States that the Republic of Cuba has made provision to give full effect to the articles of said convention:

"Now, therefore, be it known that I, Theodore Roosevelt, President of the United States of America, in conformity with the said act of Congress, do hereby declare and proclaim the said convention, as amended by the Senate of the United States, to be in effect *on the tenth day from the date of this my proclamation.*"

After stating the case as above, Mr. Justice McKENNA delivered the opinion of the Court.

The treaty as drafted and presented to the Senate provided for an exchange of ratifications at Washington as soon as might be before the 31st day of January, 1903, and should "go into effect on the tenth day after the exchange of ratifications." A supplemental convention became necessary, and an exchange of ratifications was provided to be "as soon as possible and within two months from January 31, 1903." But subsequent to that date, to wit, March 19, 1903, the Senate added the amendment: "This convention shall not take effect until the same shall have been approved by the Congress." Between the treaty, therefore, and the amendment there was an emphatic difference. The date at which the instrument should go into effect was changed. It cannot be said that the treaty provision related to time and the amendment to sanction merely and adopted the time of the treaty. To do this would be to interpret the words of the treaty one way and the same words in the amendment another way. We start, then, with the proposition that not the treaty, but the act of Congress, was to fix the date that the treaty should take effect. What date Congress fixed is the question to be considered. It was certainly competent for Congress (with the consent of Cuba) to have given the treaty retrospective, immediate or prospective operation. Which did Congress do? And in reply we are to remember there is a presumption against retrospective operation, and we have said that words in a statute ought not to have such operation "unless they are so clear, strong and imperative that no other meaning can be annexed to them, or unless the intention of the legislator cannot be otherwise satisfied." (*United States* v. *Burr*, 159 U. S. 78.) On the other hand, it must be admitted that there are words in the act of Congress which, if not of themselves, yet in connection with events, may be said to look to a retrospective operation. It is not, however, an unusual judicial problem to have to seek the meaning of a law expressed in words not doubtful of themselves, but made so by circumstances or the objects to which they come to be applied.

Both the treaty and the act of Congress concern tariff duties, and "the usual course in tariff legislation," we have said, "has been, inasmuch as some time is necessary to enable importers and business men to act understandingly, to fix a future day at which the statutes are to become operative." (*United States* v. *Burr*, *supra*.) And these remarks have application here. The treaty, it may be admitted, was intended as a beneficial concession to Cuba. But conditions in the United States were also to be considered, and we cannot assume that this would have been overlooked by Congress when legislating. It is true, as urged by appellant, that the act of December 17 deals entirely with importations from Cuba, but it is those which would have the most disturbing effect, and on account of which business in like products would have to be accommodated. These as well as the considerations urged by the appellant must be kept in mind in seeking the meaning of Congress, and we repeat that, under the Senate amendment, it is the meaning of Congress, not the meaning of the convention independent of that of Congress, we are to ascertain. It was open to Cuba to reject the amendment; it was open to Cuba to reject the legislation. If she chose to accept both they became her contracts.

Turning to the act of December 17 we find it expressed in the simple future tense, and this must be given weight. (*United States* v. *Goldenberg*, 157 U. S. 95, 102.) So far as the text of the act itself is concerned, all of its parts accord; all of its provisions are prospective but one. That pertained to the then present, the date of the act. It provided that all products which were imported free should continue to be admitted free. The provision is "all articles . . . which *are now* imported . . . free of duty *shall continue* to be so admitted . . ." This accords with and reinforces the prospective provisions, and was apparently used with deliberate and provident intention, making the act provide for the present and future, excluding the past, certainly not expressing it. Passing from the text of the act, an element of confusion appears. Ratifications had been exchanged between the United States and Cuba on March 1, 1903. The text of the act provides "that whenever the President *shall* receive satisfactory evidence that the Republic of Cuba has made provision to give full effect to the article of convention . . . he is hereby authorized to issue his proclamation declaring that he has received such evidence, and *thereupon*, on the tenth day after exchange of ratifications of such convention, . . . *and so long as said convention shall remain in force*, all articles of merchandise being the products of the Republic of Cuba, which are now imported . . . free of duty, shall continue to be admitted free of duty, and all other articles . . . shall be admitted at a reduction of 20% of the rates of duty thereon as provided in the tariff act of the United States approved July 24, 1897 . . ." The words of the act, therefore, refer

manifestly to an event to occur, which seemingly had already occurred, and upon such event, it is contended, the treaty, by its own terms and by the act of Congress, took effect, to wit, "the exchange of ratifications" of the convention. To this the Government replies that Congress, not being in session at the time, was ignorant that ratifications had been exchanged, and framed its legislation with the view that some further provision by Cuba was necessary. If we may not accept the explanation of Congress's ignorance it is not unreasonable to suppose that Congress considered it was still open to Cuba to accept or reject the treaty, and to make sure of her acceptance before the treaty should go into effect in the United States. This view satisfies completely the text of the act. We cannot suppose that if Congress intended to give retrospective operation to the act it would have used words that expressed the contrary. The day at which the treaty should operate was important, and would necessarily be ever present in mind, and it was of easy expression. Future time and past time are directly opposite, and by no inadvertence or intention can we believe or suppose that Congress, having in mind and purpose the distinction between the past and the future, should use language that expressed the one while it meant to provide for the other.

There is another important fact. The treaty was a reciprocal arrangement and intended to go into effect coincidently in the United States and Cuba. The two nations provided for this. On the day the President approved the act of Congress he issued his proclamation declaring that the treaty should go into effect on the 27th day of December. On the 17th of December the President of Cuba also issued his proclamation, stating that Congress had approved the treaty in accordance with the requirements of Article XI, and declaring that the treaty should take effect in Cuba on the day named in the proclamation of the President of the United States—December 27, 1903. This coincident operation is of the very essence of the convention. It would indeed be anomalous if a treaty which provided for reciprocal concessions should be in operation in one nation eight months before it was in operation in the other. And this is not adequately answered as appellee answers it, by saying that the President of Cuba and the President of the United States were both mistaken as to the date of the operation of the treaty, and their mistake could not affect the rights of importers. Certainly not if a mistake could be conceded. But the action of the Presidents is proof against the existence of mistakes. It shows the understanding of the executives of the two countries and affords confirmation of the view that Congress contemplated action subsequent to its legislation to put the treaty into effect.

The judgment of the Circuit Court is reversed and the case remanded with directions to affirm the order of the Board of General Appraisers.